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Supreme Court of the United States

October Term, 1966

No. 749

SARAH McINNES, *et al.*,

Petitioners,

against

THE PORT OF NEW YORK AUTHORITY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

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PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States.

Petitioners * respectfully request that a writ of certiorari be issued to review the judgment of the Court of Appeals of the State of New York, entered on July 7, 1966, which affirmed an order of the Apellate Division of the Supreme Court of the State of New York, for the First Judicial Department, entered on February 1, 1966, affirming an order and judgment of a Special Term of the Supreme Court of the State of New York, for the County of New York, entered on December 1, 1965.

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* Sarah McInnes and David McInnes, individually, as co-owners of the property at 63 Cortlandt Street, New York, New York, and as co-partners doing business under the name of McInnes of Cortlandt Street, Solomon Adler, individually and doing business under the name of Adson Radio & Electronics Company, Merns, Inc., Martin Brody and Elmer Schoenfeld, as co-partners doing business under the name of Morel and Elmo, and Oscar's Radio Shop, Inc., on behalf of themselves and all others similarly situated.

Opinions Below

The majority and minority opinions of the Court of Appeals are reported in 18 N.Y. 2d 250, 273 N.Y.S. 2d 337, and are printed in Appendix "B" below, beginning at page 33a. There was no opinion in the Appellate Division, First Department. The opinion of Special Term, New York County, is reported in 48 Misc. 365, 264 N.Y.S. 2d 802, and is printed in Appendix "B" below, beginning at page 39a.

Jurisdiction of this Court

The judgment of the Court of Appeals was entered on July 7, 1966. On application filed in this Court by petitioners on October 3, 1966, their time to file this petition was extended by Mr. Justice John M. Harlan from October 5, 1966, to November 4, 1966.

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(3). Petitioners claim that their property has been taken without due process of law.

Question Presented

Is not the taking of private property by a state agency in a condemnation proceeding for a primary purpose substantially different from the primary purpose set forth in the state statute authorizing condemnation a violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States?

Constitutional and Statutory Provisions Involved

The constitutional provisions involved in this case are contained in Section 1 of the Fourteenth Amendment to the Constitution of the United States, which is printed in Appendix "A" below on page 1a.

The statutory provisions involved herein are contained in Chapter 209 of the Laws of New York of 1962 (McK. Unconsol. Laws, §§ 6601-6618). They are printed in Appendix "A" below, beginning at page 1a.

Statement of the Case

The Facts

In 1960, the Governor of the State of New York requested The Port of New York Authority (hereinafter called "The Port Authority") to study and report on the subject of a "World Trade Center" to be located in the City of New York. The Port Authority made such study, and in 1961 submitted a report to the governors of New York and New Jersey and to the members of the legislatures of both states recommending the construction of a World Trade Center on a specific site on the east side of lower Manhattan (A. 52; Ex. 2A, p. 25).*

The 1961 Report of The Port Authority contained detailed drawings of the buildings proposed to be included in the project. Those were a 72-story "World Trade Mart," a 30-story "World Commerce Exchange," a 20-story "Trade Center Gateway" and an 8-story "Securities Exchange" (Ex. 2A to Answers to Interrogatories [Ex. 6B at trial], pp. 32-34). The Report also contained detailed descriptions of the types of private firms and government agencies proposed to be included in the project. There was, however, not a single reference to any New York State agency or to any Port Authority department except the Authority's Eastern Trade Development Office (*ibid.*, p. 10). Moreover, the reference to the latter department

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* The letter "A." refers to the appendix of appellants 62 Cortlandt Street Realty Co., Inc., et al.; in the Court of Appeals. The exhibits referred to were not printed in any appendix, although they were part of the record in Special Term, New York County. Certified copies of those exhibits are being filed with this petition.

strongly suggests that it was intended to be the only department proposed to be included in the project (*ibid.*).

Shortly after the publication of the 1961 Report, without any hearing, a bill providing for the construction and maintenance by The Port Authority of a World Trade Center on the east side of lower Manhattan was passed by the New York State legislature (Ch. 312, Laws N. Y. 1961). The bill also provided for the acquisition, rehabilitation and operation by The Port Authority of a rapid transit system in and between New Jersey and Manhattan, then owned and operated by the Hudson & Manhattan Railroad Company, of which more will be said below.

The 1961 bill never went into effect. By its terms, it was not to become effective unless a substantially identical statute was passed by the New Jersey legislature, and no such companion statute was ever passed (A. 52).

The reasons why the 1961 bill was not passed by the New Jersey legislature are clear, undisputed and helpful in explaining the only differences between the 1961 bill and the legislation involved in this case. The idea of a World Trade Center in New York City did not, for obvious reasons, attract any substantial support among the people of New Jersey (A. 53). On the other hand, the rehabilitation and continued operation of the aforementioned rapid transit system (hereinafter called the "Hudson Tubes") was and is vital to the economic life of northern New Jersey (A. 53). In 1961, the private owner of the Hudson Tubes was in the process of reorganization and was destined for bankruptcy unless its assets were purchased by some governmental authority (A. 53).

The opposition of New Jersey was overcome, however, when it was made clear to the people of that state that if they did not agree to a World Trade Center in New York City, they would probably have to abandon hope of saving the Hudson Tubes (A. 53). As a face-saving device, it

was now proposed that the site of the World Trade Center should be on the west side of Manhattan, on the Hudson River, where the project would at least be as close as possible to the New Jersey state boundary (A. 53).

In 1962, the Port Authority submitted a combined report on the proposed World Trade Center and the Hudson Tubes to the governors and legislatures of New York and New Jersey (Ex. 2B). As indicated above, this report recommended a change in the site of the proposed World Trade Center from the east side to the west side of lower Manhattan (Ex. 2P, p. 6).* It also recommended that the World Trade Center and Hudson Tubes be made inseparable parts of one unified project (Ex. 2B, p. 2). It noted that the New York Stock Exchange had abandoned the idea of relocating in the project (Ex. 2B, p. 7).

The 1962 Report referred the reader to the 1961 Report for the details of the World Trade Center (Ex. 2B, p. 5). It did, however, contain one additional drawing of the buildings proposed to be included in the project (Ex. 2B, p. 7a). That drawing clearly depicts the 72-story "World Trade Mart," the 30-story "World Commerce Exchange" and the 20-story "Trade Center Gateway" which had been described in detail in the 1961 Report. Of course, it did not include the 8-story "Securities Exchange" because of the change of plans of the New York Stock Exchange (Ex. 2B, p. 7a).

The 1962 Report did not contain a single reference to any New York State agency, and it did not even repeat the reference in the 1961 Report to The Port Authority's Eastern Trade Development Office.

Promptly after the publication of the 1962 Report, bills providing for the unified project recommended therein were

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* The area involved in this condemnation proceeding occupies 13 irregular New York City blocks, roughly 16 acres.

passed by both the New York and New Jersey legislatures (McK. Unconsol. Laws, § 6601 *et seq.*; N.J.S.A. 32: 1-35.50 *et seq.*). The New York bill was once again passed without any hearing. The New Jersey bill had only a perfunctory hearing in which no mention was made of the types of private firms or government agencies proposed to be included in the World Trade Center (A. 54).

Shortly after the enabling legislation was enacted, several fellow merchants of the present petitioners commenced a declaratory judgment action in Supreme Court, New York County, challenging the constitutionality of the legislation on the ground, among others not pertinent here, that the statutory description of the World Trade Center would permit The Port Authority to construct a project for the primary (and concededly non-public) purpose of producing revenue, rather than for the primary purpose of promoting world trade. (*Courtesy-Sandwich Shop, Inc.* v. *The Port of New York Authority*, 12 N. Y. 2d 379, 240 N. Y. S. 2d 1, app. dis. 375 U. S. 78, reh. den. 375 U. S. 960).

In that prior proceeding, the Appellate Division, First Department, held that the enabling legislation was unconstitutional on the ground stated above (17 App. Div. 2d 590). The Court of Appeals, however, reversed the Appellate Division (12 N. Y. 2d 379). It construed the statutory description of the World Trade Center to provide for a project based on the concept of centralization, or "centralized accommodation," of facilities and services engaged in world trade, and it held that such concept constituted a proper public purpose for condemnation.

At the argument in the Court of Appeals in the *Courtesy-PATH* case, The Port Authority submitted a schedule showing a proposed allocation of space in the World Trade Center which had been prepared by the Authority at or about the time its 1962 Report had been published, but which had not been published or otherwise made known to the New York and New Jersey legislatures prior to its

submission to the Court of Appeals (A. 222; Ex. 10). The schedule read in full as follows:

Customs and other governmental services	sq. ft.
(a) offices	970,000
(b) specialized	540,000
Customs brokers, freight forwarders, carriers, banking, insurance and similar services	1,700,000
World Trade information and promotion services	80,000
Export-Import Exhibit and office space	2,330,000
Commodity exchange	80,000
Parking	760,000
Hotel and meeting rooms	165,000
Storage	120,000
Building circulation and other common areas	1,445,000
Other auxiliary services and incidental space	565,000
Total	8,755,000

"Customs," of course, is a reference to the Federal Bureau of Customs, which concededly requires about 800,000 square feet of rentable space for its operations in New York City (A. 254). Thus, even after the enactment of the enabling legislation, The Port Authority itself did not contemplate that more than 710,000 square feet of rentable space in the World Trade Center would be occupied by governmental agencies other than customs. In its brief to the Court of Appeals, The Port Authority commented on the foregoing schedule as follows:

> "The following tentative space allocations were assigned to *the functions which had been described in the 1961 Report to the Legislatures* (pp. 6-25)." (Ex. 41 to Answers to Interrogatories [Ex. 6B at trial], p. 6).

The prior proceeding came to this Court on appeal, but that appeal was dismissed for lack of a substantial federal question (375 U. S. 78), and a rehearing of the motion to dismiss was denied (375 U. S. 960).

Shortly thereafter, on January 14, 1964, the Governor of New York announced that the offices of New York State agencies located in New York City would be relocated in the World Trade Center when that project was built (A. 62). In the same announcement, he stated that the State agencies would occupy a major portion of one of the buildings to be constructed in the project, and that such building would be called "The New York State Building" (A. 62).

Since no mention of any such proposed relocation had ever before been made to the New York or New Jersey legislatures, its announcement burst like a bombshell, and was greeted by a substantial amount of adverse comment by members of the legislatures and others (A. 62).

The New York State agencies are, 48 in number, and not a single one of those agencies has any substantial connection with world trade except the Department of Commerce (A. 239-40, 242).

On January 18, four days after the Governor's announcement, The Port Authority revealed its full plans for the World Trade Center (A. 61). These are the plans for which the Authority has sought and obtained the condemnation of petitioners' property. They provide for two 110-story super-skyscrapers flanked by two 5-story buildings which serve to wall off a spacious plaza (A. 55).

The Port Authority has revealed in the course of this present proceeding that it intends to relocate *all* Port Authority departments in the World Trade Center, and not merely its Eastern Trade Development Office (A. 254).

The Authority's current schedule of space allocation shows 1,900,000 square feet of rentable space allotted to New York State agencies, and 790,000 square feet of rentable space allotted to Authority departments, in a total of 10,530,000 square feet of rentable space, of which 2,000,000 is "auxiliary" and "incidental" (A. 254).

The State agencies will necessarily occupy and dominate one of the two super-skyscrapers, which, as indicated above, will be called "The New York State Building." It has been suggested by petitioners in the courts below, and not denied by The Port Authority, that the other super-skyscraper will be called "The Port Authority Building."

When the Port Authority revealed its plans for the World Trade Center, it had no tenants and no reasonably certain prospects as tenants of the project, except New York State agencies and its own departments (A. 184). Between that time and the commencement of the present proceeding, it claims to have obtained the signatures of private firms and other governmental agencies on "letters of intent" covering an aggregate of 1,567,000 square feet of rentable space in the project (A. 65, 254). This is less than one-sixth of the total rental space in the project and about one-half of the space allotted to New York State agencies and Port Authority departments.

Moreover, two of the sources most essential to world trade are those provided by customs brokers and freight forwarders. In its 1961 Report, The Port Authority noted that 133 customs brokers, constituting 67% of the total in New York City, and 218 freight forwarders, constituting 39% of the total in New York City, were already located within a ⅛ mile radius in lower Manhattan—i.e., in an area

smaller than that involved in this proceeding (Ex. 2A to Answers to Interrogatories [Ex. 6B at trial], p. 16). Among the signers of its "letters of intent," the Authority claims to have only 61 customs brokers (about 30% of the total) and 82 freight forwarders (about 15% of the total) (A. 76-124).

Thus, even if the few customs brokers and freight forwarders who are claimed to have signed "letters of intent" to relocate in the World Trade Center become tenants in the project, there will be no more, and perhaps less, centralization of those critical services than there was before the project.

The Proceedings Below

This condemnation proceeding is connected, although never formally consolidated, with a second declaratory judgment action (not to be confused with the *Courtesy-PATH* case, *supra*) which was brought by certain realtors in Supreme Court, New York County, against The Port Authority, and in which the petitioners herein intervened (A. 16). That other action had been going on for about one year, and pre-trial depositions of Port Authority officials were being taken therein, when this condemnation proceeding was commenced (A. 16-17).

At the outset of this proceeding, The Port Authority made an application for "accelerated judgment," by which it sought summary judgment (A. 17, 147). In support of its application, the Authority submitted only the customary petition served and filed in condemnation proceedings of this type, a memorandum of law, and various "exhibits" consisting almost entirely of papers in the companion declaratory judgment action (A. 135-137, 176-257). Those exhibits include copies of The Port Authority's 1961 and 1962 Reports, its answers to interrogatories in the declaratory judgment action and the transcript of its official's deposition in that action, together with copies of the exhibits

annexed to the answers to interrogatories and marked for identification in the deposition.

At the same time as The Port Authority made its application for accelerated judgment, petitioners moved to stay this condemnation proceeding until the determination of the declaratory judgment action or, alternatively, to consolidate both cases (A. 130). Petitioners' motion was withdrawn after it was stipulated by all parties that all issues raised in the declaratory judgment action would be heard and determined in this proceeding, and that petitioners' intervening complaint in the declaratory judgment action would be deemed to constitute its answer and objections in this proceeding (A. 130).

Petitioners and the other objectants in this proceeding were then given one week to serve and file all papers in opposition to The Port Authority's application for accelerated judgment. Petitioner thereupon served and filed the only affidavit in this proceeding (A. 49-73). The Port Authority submitted a "reply" affidavit by Patrick J. Falvey, Esq., but it is actually only a supplement to The Port Authority's answers to interrogatories (A. 74-124).

On the adjourned return date of the petition herein, Special Term heard oral argument on the application for accelerated judgment, which Special Term treated as if it were a motion for summary judgment. Subsequently, Special Term granted the application and signed an order and judgment condemning petitioners' property and vesting The Port Authority with title to that property and all of the other property within the area designated as the site of the World Trade Center (App. B, pp. 39a-44a).

The Appellate Division, First Department, affirmed without opinion.

The Court of Appeals affirmed by a 6-1 vote, with a *per curiam* opinion by the majority (App. B, pp. 33a-36a) and a dissenting opinion by Judge Van Voorhis (App. B, pp. 36a-38a).

The Manner in Which the Federal Question Was Raised

In their answers and objections served and filed in Special Term, petitioners alleged as follows (Pet. Br. & App., p. A-12):

> ". . . the said real estate development [i.e., the plans of The Port Authority for the World Trade Center] and the said action of The Port Authority in leasing space therein as aforesaid are either unauthorized by said bi-state legislation or are unconstitutional interference by The Port Authority with the business and property of [petitioners] and all others similarly situated and deprive them of their business and property without due process of law."

In their brief on the application for accelerated judgment in Special Term, petitioners began their "Point IV" with the following statement:

> "[Petitioners] rely upon two cases decided by the Court of Appeals and upon the theory that those decisions, both relatively recent, remain the law of this State and protect its citizens against the taking of their property without due process of law, . . ."

In their brief in the Court of Appeals, petitioners began their Point "IV" with the following heading:

> "Neither Chapter 209 and its companion statute nor any other law of this State or New Jersey authorizes the Port Authority to take private property for the primary purpose provided for in its current plans, and in the absence of any such statute or law any such taking violates the Constitutions of this State, New Jersey and the United States, all of which prohibit the taking of private property without due process of law." (Pet. Br. and App., p. 28.)

In deciding this question, none of the courts below adverted to it directly. They disposed of it, to their satisfaction, by holding that the primary purpose of the World

Trade Center as set forth in the enabling legislation was substantially the same as the primary purpose for which The Port Authority was and is seeking to take petitioners' property, as disclosed by its plans for the project.

Reasons for Granting the Writ

It would seem to be well-established that, although a state's sovereign right of eminent domain over real property lying within its boundaries is inherent, that right lies dormant and does not become effective unless and until it is invoked by the state government through legislative action. 1 Nichols on Eminent Domain, 3d Ed., § 3.2, p. 203; *Secombe* v. *Railroad Co.*, 23 Wall. 108, 23 L. Ed. 67; *United States* v. *Parcel of Land, etc.*, 100 F. Supp. 408, 504 (D.C.D.C. 1951).

It was conceded by The Port Authority in the courts below that this is also the law of New York, and that no official or agency purporting to act for that state has the right to condemn property for a purpose different from that authorized by the state legislature, even if the purpose would be recognized as a proper one if it were so authorized. *Queens Terminal Co.* v. *Schmuck*, 147 App. Div. 502, 132 N.Y.S. 159 (2d Dept. 1911); *Erie Railroad Co.* v. *Steward*, 61 App. Div. 480 (2d Dept. 1901), aff'd 170 N.Y. 172; *American Dock Co.* v. *City of New York*, 174 Misc. 813, 824, 21 N.Y.S. 2d 943, aff'd 261 App. Div. 1063, 26 N.Y.S. 2d 704 (1st Dept. 1941), aff'd 286 N.Y. 658.

Petitioners are aware that if The Port Authority had been authorized by the New York and New Jersey legislatures to condemn property for the primary purpose of housing New York State agencies and Port Authority departments, there would be no question for this Court to decide. We submit, however, that the Authority was authorized to do no such thing.

This is not a dry, technical proposition. It is one thing to say that the New York and New Jersey Legislatures

have the right to authorize condemnation in order to house government agencies, and another thing to say that those legislatures have as a matter of fact decided to invoke that right at a particular time or by taking a particular parcel or parcels of private property.

If the area involved in this proceeding is condemned, hundreds of businesses will be terminated or suspended for substantial periods of time—without compensation for the resulting losses or damages to those businesses—and thousands of jobs will be lost. It may be that the New York and New Jersey legislatures have taken these facts into account and decided, nonetheless, that room must be made, and must be made in the particular area, for a World Trade Center. Entirely different policy considerations, however, are involved in a legislative decision to make room in the area for New York State agencies and Port Authority departments. For one thing, those agencies and departments are already located in New York City.

The facts of the matter are as clear and undisputed as the applicable rule of law. New York and New Jersey have passed legislation authorizing The Port Authority to construct a World Trade Center in New York City. New York's highest court has declared that the primary purpose of that legislation is the "centralized accommodation" of facilities and services engaged in world trade in the New York port. The Port Authority, however, has announced plans for the World Trade Center which provide for two main buildings, one to house New York State agencies requiring space in New York City and to be called "The New York State Building," and the other to house all of The Port Authority's departments and to be called "The Port Authority Building." No New York agency constitutes a facility or service engaged in world trade, except the State Department of Commerce, and that department, of course, is at least as much concerned with intrastate and interstate commerce as it is with world trade. No Port Authority department constitutes a facility or

service engaged in world trade, except the Authority's Eastern Trade Development Office, and, like the New York State Department of Commerce, it has been at least as much concerned with intrastate and interstate commerce as it has been with world trade.

This Court has already been put on notice of The Port Authority's prior lack of connection with world trade. One of the main questions in the *Courtesy-PATH* case, *supra*, was whether The Port Authority could even be delegated the power to construct a project such as the World Trade Center, since the Compact of 1921 between New York and New Jersey specifically gives the Authority only the power to construct and operate transportation and terminal facilities, and in the forty-five years that have elapsed since the Compact was signed, the Authority has been exclusively engaged in constructing and operating only such facilities.

The one other significant fact in this case is that, up to the time of the commencement of the case, The Port Authority had obtained "letters of intent" for 1,567,000 square feet of rentable space in the proposed World Trade Center. Those letters, however, are not leases. They concededly cover less than one-sixth of the total rentable space in the project and only about one-half of the space allotted to New York State agencies and Port Authority departments. They necessarily relate to space only on the uppermost floors of the two super-skyscrapers provided for in the Authority's plans, since all of the other floors in "The New York State Building" will be occupied by State agencies and all of the other floors in "The Port Authority Building" will be used by Authority departments. Lastly, even if the "letters of intent" develop into leases, they could not possibly bring into the World Trade Center enough firms and agencies engaged in world trade to increase the very high degree of centralization of such firms and agencies that already exists in New York City.

In spite of the foregoing, the Court of Appeals has now decided, summarily, that the primary purpose of the legislation authorizing the construction of the World Trade Center is substantially the same as that underlying the plans of The Port Authority for the same project. Is this Court foreclosed by that decision? Petitioners respectfully submit that it is not.

To begin with, the Court of Appeals' decision is, by that Court's own standards, essentially a determination of fact. According to New York law, the question as to whether or not the primary purpose of a statute authorizing condemnation is substantially the same as that for which a particular condemnation is sought by the condemning authority is essentially a question of fact. *Denihan Enterprises, Inc.* v. *O'Dwyer*, 277 App. Div. 407, 100 N.Y.S. 2d 512, aff'd 302 N.Y. 451 (1951).

In the *Denihan* case, the plaintiff was the owner of a parcel threatened with condemnation. The defendants were New York City and the New York Life Insurance Company. The statute involved was Section 72-j of the General Municipal Law of New York (McK. Gen. Mun. Law, § 72-j), which permits a municipal corporation to condemn private property for the construction of garages and parking spaces in order to relieve traffic congestion. It also allows the use of a portion of the condemned property for commercial purposes other than the primary statutory purpose in order to produce revenue to finance the primary statutory purpose. In *Denihan*, as in the present proceeding, there was no question as to the validity of the statute; under attack were the plans of the condemning authority, New York City, which were contained in a lease agreement between the City and the aforementioned insurance company.

Denihan came to the Court of Appeals on a motion to dismiss the complaint for insufficiency, so that the allegations of the complaint were assumed by the Court to be the facts of the case. All that the "facts" showed, how-

ever, was that the lease agreement between the City and the insurance company provided for a garage consisting of two stories above the ground (and, apparently, at least two below), with a landscaped roof, one-half of which was to be developed as a public park. No mention was made in the contract as to the use of the other half. The plaintiff claimed that the other half was intended to be used as a private park for the benefit of the tenants of an apartment development owned by the insurance company, and the plaintiff strongly emphasized that the lease agreement permitted 30% of the ground floor and first basement space to be rented for commercial purposes not connected with garaging or parking.

The plaintiff also alleged that the plans of the insurance company would not significantly relieve traffic congestion, the primary statutory purpose, since the net result of the plans would be that only 17 additional parking spaces would be made available to the general public.

On the basis of these allegations, the Court of Appeals denied the motion to dismiss the complaint, and held that there was a triable issue of fact as to whether or not the primary purpose of the General Municipal Law, § 72-j, was the substantially the same as that underlying the plans of New York City as revealed in its lease with the insurance company.

Unfortunately, much of the argument in the courts below in this present condemnation proceeding was focused on the meaning of four words to be found in Section 2 of the enabling legislation, where "World Trade Center" is defined. The words in question are "and other governmental services," and they are to be found at the end of the general enumeration of facilities and services in the definition (*infra*, App. A, pp. 9a-10a). The Port Authority argued, the Court of Appeals has determined, and petitioners now must concede that those words permit the Authority to lease some space in the project to government agencies

regardless of whether or not those agencies have any connection with world trade. In this limited respect, the Court of Appeals' decision was a construction of statutory language, and this Court has rarely, if ever, rejected a state court's construction of a state statute. *Winters* v. *New York*, 333 U.S. 507, 514; *Kingsley Pictures Corp.* v. *Regents*, 360 U.S. 684, 688; *Cramp* v. *Bd. of Public Instruction*, 368 U.S. 278, 285; *Herbert* v. *Louisiana*, 272 U.S. 312, 317.

Specific powers, however, should not be confused with general purposes. There is a vast difference between the conceded power of The Port of Authority to lease some space in the World Trade Center for the use of New York State agencies and Authority departments and its vigorously questioned right to make the primary purpose of the project the relocation of such agencies and departments. There is an equally vast difference between a project which has as its main purpose the "centralized accommodation" of facilities and services engaged in world trade, and one which has as its main purpose the housing of government agencies, regardless of function.

The basic question in this case remains one relating to the main purpose underlying the plans of The Port Authority for the World Trade Center. That question remains a question of fact, and this Court has often cast aside a state court's findings of fact where those findings were unwarranted by the record of the case and adversely affected rights guaranteed by the Federal Constitution. *Southern Pacific Co.* v. *Arizona*, 325 U.S. 761, 771; *Hooven & Allison Co.* v. *Evatt*, 324 U.S. 652, 659; *Spano* v. *New York*, 360 U.S. 315, 316.

In the *Hooven* case, Chief Justice Stone stated the following on behalf of this Court:

> "In all cases coming to us from a state court, we pay great deference to its determinations of fact.

> But when the existence of an asserted Federal right or immunity depends upon the appraisal of undisputed facts of record, or where reference to the facts is necessary to the determination of the precise meaning of the federal right or immunity as applied, we are free to reexamine the facts as well as the law in order to determine for ourselves whether the asserted right or immunity is to be sustained." (324 U.S. 652, 659.)

Petitioners respectfully submit that their asserted Federal right—i.e. the right not to have their property taken without due process of law—"depends upon the appraisal of undisputed facts of record." Moreover, we submit that the only reasonable appraisal that can be made of those facts is that they, at the very least, raise a serious question as to whether petitioners' property is being condemned for a purpose not authorized by the legislature of their state. The courts below have evaded that question by deciding it summarily against petitioners. They have thereby ignored petitioners' Federal rights, and such action on the part of a state judiciary may well be more subversive of Federal rights than an isolated instance of deliberate infringement of such rights by a state administrative official or agency.

CONCLUSION

In light of the foregoing, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

Constitutional Provisions

Amendment XIV, United States Constitution

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statutory Provisions

Chapter 209, Laws of New York 1962

Section 1. The states of New York and New Jersey hereby find and determine:

(1) that the transportation of persons to, from and within the port of New York, and the flow of foreign and domestic cargoes to, from and through the port of New York are vital and essential to the preservation of the economic well-being of the northern New Jersey-New York metropolitan area;

(2) that in order to preserve the northern New Jersey-New York metropolitan area from economic deterioration, adequate facilities for the transportation of persons must be provided, preserved and maintained and that rail services are and will remain of extreme importance to such transportation of persons;

(3) that the interurban electric railway now or heretofore operated by the Hudson & Manhattan railroad company

is an essential railroad facility serving the northern New Jersey-New York metropolitan area, that its physical plant is in a severely deteriorated condition, and that it is in extreme financial condition;

(4) that the immediate need for the maintenance and development of adequate railroad facilities for the transportation of persons between northern New Jersey and New York would be met by the acquisition, rehabilitation and operation of the said Hudson & Manhattan interurban electric railway by a public agency, and improvement and extensions of the rail transit lines of said railway to permit transfers of its passengers to and from other transportation facilities and in the provision of transfer facilities at the points of such transfers;

(5) that in order to preserve and protect the position of the port of New York as the nation's leading gateway for world commerce it is incumbent on the states of New York and New Jersey to make every effort to insure that their port receives its rightful share of the ocean-borne cargo volumes generated by the economy of the nation;

(6) that the servicing functions and activities connected with the oceanborne and overseas airborne trade and commerce of the port of New York district as defined in the compact between the said two states dated April thirty, nineteen hundred twenty-one (hereinafter called the port district), including customs clearance, shipping negotiations, cargo routing, freight forwarding, financing, insurance arrangements and other similar transactions which are presently performed in various, scattered locations in the city of New York, state of New York, should be centralized to provide for more efficient and economical transportation of persons and more efficient and economical facilities for the exchange and buying, selling and transportation of commodities and other property in world trade and commerce;

(7) that unification, at a single, centrally located site, of the principal New York terminal, of the aforesaid interurban electric railway and a facility of commerce accommodating the said functions and activities described in subdivision six of this section and the appropriate governmental, administrative and other services connected with or incidental to transportation of persons and property and the promotion and protection of port commerce, and providing a central locale for exhibiting and otherwise promoting the exchange and buying and selling of commodities and property in world trade and commerce, will materially assist in preserving for the two states and the people thereof the material and other benefits of a prosperous port community;

(8) that the port of New York authority (hereinafter called the port authority), which was created by agreement of the two states as their joint agent for the development of the transportation and terminal facilities and other facilities of commerce of the port district and for the promotion and protection of the commerce of their port, is the proper agency to act in their behalf (either directly or by or through wholly-owned subsidiary corporations) to effectuate, as a unified project, the said interurban electric railway and its extensions and the facility of commerce described in subdivision seven of this section; and

(9) that the undertaking of the aforesaid unified project by the port authority has the single object of preserving, and is part of a unified plan to aid in the preservation of, the economic well-being of the northern New Jersey-New York metropolitan area and is found and determined to be in the public interest.

§ 2. The following terms as used in this act shall have the following meanings:

"Bonds" shall mean bonds, notes, securities or other obligations or evidences of indebtedness;

"Effectuation" of a project or any facility or part of a facility constituting a portion of a project shall include but not be limited to its establishment, acquisition, construction, development, maintenance, operation, improvement (by way of betterments, additions or otherwise) and rehabilitation;

"Exchange place terminal area" shall mean the area in the city of Jersey City, state of New Jersey, bounded generally by Exchange place and Montgomery street, by Warren street, by Pearl street, by Greene street, and by Morgan street as extended to the bulkhead line and by said bulkhead line, together with such additional contiguous area as may be agreed upon from time to time between the port authority and the said city;

"General reserve fund statutes" shall mean chapter forty-eight of the laws of New York of nineteen hundred thirty-one as amended, and chapter five of the laws of New Jersey of nineteen hundred thirty-one as amended, and "general reserve fund" shall mean the general reserve fund of the port authority authorized by said statutes;

"Hudson tubes" shall mean that portion of the port development project constituting a railroad facility consisting of the four interstate rail tunnels under the Hudson river now or heretofore owned or operated by the Hudson & Manhattan railroad company, the rail transit lines of the Hudson tubes, the balance of the interurban electric railway system in and through said tunnels and over said lines and incidental thereto (including but not limited to the portion of such lines and system now or heretofore operated jointly by said railroad company and the Pennsylvania railroad company), terminals, including but not limited to terminals in the Hudson tubes-world trade center area, in the Journal square terminal area and in the Exchange place terminal area and other related railroad property;

"Hudson tubes extensions" shall mean those portions of the port development project constituting passenger railroad facilities extending directly from the rail transit lines of the Hudson tubes, over new rail transit lines or on or over the existing rail transit lines of other railroads, to transfer facilities in the rail passenger transfer area, for the transfer of passengers of the Hudson tubes to and from other railroads, and other related railroad property;

"Hudson tubes-world trade center area" shall mean the area in the borough of Manhattan, city and state of New York, bounded generally by the east side of Church street on the east, the south side of Liberty street and the south side of Liberty street extended on the south, the Hudson river on the west, and on the north by a line beginning at the point of intersection of the Hudson river and the north side of Vesey street extended, running along the north side of Vesey street extended and the north side of Vesey street to the west side of Washington street, then along the west side of Washington street to the north side of Barclay street, then along the north side of Barclay street to the east side of West Broadway, then along the east side of West Broadway to the north side of Vesey street then along the north side of Vesey street to the east side of Church street, together with such additional contiguous area as may be agreed upon from time to time between the port authority and the said city;

"Journal square terminal area" shall mean the area in the city of Jersey city, state of New Jersey, bounded generally by Journal square, Hudson boulevard, Pavonia avenue, Summit avenue and Sip avenue, together with such additional contiguous area as may be agreed upon from time to time between the port authority and the said city;

"Municipality" shall mean a county, city, borough, village, town, township or other similar political subdivision of New York or New Jersey;

"Parking facilities" forming a part of the Hudson tubes or Hudson tubes extensions shall mean one or more areas, buildings, structures, improvements or other accommodations or appurtenances at or in the vicinity of any terminal or station of the Hudson tubes or Hudson tubes extensions and necessary, convenient or desirable in the opinion of the port authority for the parking of motor vehicles of users of the Hudson tubes or the Hudson tubes extensions and of members of the general public and for the parking and storage of omnibuses and railroad cars serving users of the Hudson tubes or the Hudson tubes extensions and for the transfer of the operators and passengers of such motor vehicles, omnibuses and railroad cars to and from the railroad cars of the Hudson tubes or the Hudson tubes extensions, and for purposes incidental thereto;

"Purposes of this act" shall mean the effectuation of the port development project and of each facility constituting a portion thereof and of each part of each such facility, and purposes incidental thereto;

"Rail passenger transfer area" shall mean the area in the state of New Jersey bounded as follows: beginning on the west bank of the Hudson river at the southerly side of the right-of-way of the Central railroad of New Jersey easterly of the Communipaw station in the city of Jersey city, thence northwestwardly along said southerly side of the right-of-way of the Central railroad of New Jersey through the cities of Jersey city and Kearny to Broad street in the city of Newark; thence northwardly along Broad street to Clay street, thence eastwardly along Clay street to the boundary between the counties of Hudson and Essex in the Passaic river, thence northwardly along said boundary to its intersection with the boundary line between counties of Bergen and Hudson, thence eastwardly and northwardly along said boundary to New Jersey state highway route three, thence eastwardly along said route three, the Lincoln tunnel viaduct and a line in continuation

of said viaduct and tunnel to the west bank of the Hudson river, thence southwardly along said west bank to the point and place of beginning;

"Rail transit lines" shall mean right-of-way and related trackage, and the "rail transit lines of the Hudson tubes" shall mean the rail transit lines beginning at the Market street station of the Pennsylvania railroad company in the city of Newark, state of New Jersey and extending generally (i) eastwardly along the joint service and operating route now or heretofore used by the Hudson & Manhattan railroad company and the Pennsylvania railroad company to the point of connection thereof with the tracks now or formerly of the Hudson & Manhattan railroad company in or about the Journal square terminal area; thence (ii) continuing eastwardly along the tracks and right-of-way now or heretofore used by the Hudson & Manhattan railroad company through the city of Jersey city, state of New Jersey and through the tunnels under the waters of the Hudson river and through Cortlandt and Fulton streets in the borough of Manhattan, city and state of New York to the Hudson terminal in the Hudson tubes-world trade center area; with a branch from the aforesaid route from a point located between the Grove street and Exchange place stations in said city of Jersey city northwardly and eastwardly to the Hoboken terminal station in the city of Hoboken, state of New Jersey and with a second branch from said first branch eastwardly and through the tunnels under the waters of the Hudson river to the said borough of Manhattan passing through or adjacent to Morton street, Greenwich street, Christopher street and the avenue of the Americas (formerly Sixth avenue) to the West Thirty-third street terminal in said borough of Manhattan; and rail transit lines of the Hudson tubes and of the Hudson tubes extensions shall in each case include such rail transit lines as the port authority may deem necessary, convenient or desirable to and from parking facilities, storage yards,

maintenance and repair shops and yards forming part thereof;

"Real property" shall mean lands, structures, franchises and interests in land, waters, lands under water and riparian rights and any and all things and rights included within said term, and includes not only fees simple absolute but also any and all lesser interests, including but not limited to easements, rights-of-way, uses, leases, licenses and all other incorporeal hereditaments and every estate, interest or right, legal or equitable, including terms for years, and liens thereon by way of judgments, mortgages or otherwise;

"Related railroad property" shall mean any property, real, personal or mixed, necessary, convenient or desirable, in the opinion of the port authority, to the effectuation of a railroad facility which is a portion of the port development project and shall include but not be limited to rail transit lines; terminals and stations; power, fuel, communication, signal and ventilation systems; cars and other rolling stock; storage yards; repair and maintenance shops, yards, equipment and parts; parking facilities; transfer facilities for transfer of passengers between such railroad facility and other railroads or omnibuses; offices; and other buildings, structures, improvements, areas, equipment or supplies; and, in the case of buildings, structures, improvements or areas in which any one or more of such railroad functions are accommodated shall include all of such buildings, structures, improvements or areas notwithstanding that portions thereof may not be devoted to any of the purposes of the port development project other than the production of incidental revenue available for the expenses of all or part of the port development project, except that in the Hudson tubes-world trade center area the portions of such buildings, structures, improvements or areas constructed or established pursuant to this act which are not devoted primarily to railroad functions,

activities or services or to functions, activities or services for railroad passengers shall be deemed a part of the world trade center and not related railroad property;

"Surplus revenues" from any facility shall mean the balance of the revenues from such facility (including but not limited to the revenues of any subsidiary corporation incorporated for any of the purposes of this act) remaining at any time currently in the hands of the port authority after the deduction of the current expenses of the operation and maintenance thereof, including a proportion of the general expenses of the port authority as it shall deem properly chargeable thereto, which general expenses shall include but not be limited to the expense of protecting and promoting the commerce of the port district, and after the deduction of any amounts which the port authority may or shall be obligated or may or shall have obligated itself to pay to or set aside out of the current revenues therefrom for the benefit of the holders of any bonds legal for investment as defined in the general reserve fund statutes;

"Surplus revenues of the port development project" shall mean the surplus revenues of the Hudson tubes, the Hudson tubes extensions and the world trade center; and

"World trade center" shall mean that portion of the port development project constituting a facility of commerce consisting of one or more buildings, structures, improvements and areas necessary, convenient or desirable in the opinion of the port authority for the centralized accommodation of functions, activities and services for or incidental to the transportation of persons, the exchange, buying, selling and transportation of commodities and other property in world trade and commerce, the promotion and protection of such trade and commerce, governmental services related to the foregoing and other governmental services, including but not limited to custom houses, customs stores, inspection and appraisal facilities, foreign trade

zones, terminal and transportation facilities, parking areas, commodity and security exchanges, offices, stores, warehouses, marketing and exhibition facilities and other facilities and accommodations for persons and property and, in the case of buildings, structures, improvements and areas in which such accommodation is afforded, shall include all of such buildings, structures, improvements and areas other than portions devoted primarily to railroad functions, activities or services or to functions, activities or services for railroad passengers, notwithstanding that other portions of such buildings, structures, improvements and areas may not be devoted to purposes of the port development project other than the production of incidental revenue available for the expenses of all or part of the port development project.

§ 3. In furtherance of the aforesaid findings and determinations and in partial effectuation of and supplemental to the comprehensive plan heretofore adopted by the two said states for the development of the said port district, the port authority is hereby authorized and empowered to establish, acquire, construct, effectuate, develop, own, lease, maintain, operate, improve and rehabilitate a project herein referred to as the port development project, which shall consist of a facility of commerce herein referred to as the world trade center, to be located within the Hudson tubes-world trade center area, and railroad facilities herein referred to as the Hudson tubes and the Hudson tubes extensions. The port authority shall proceed as rapidly as may be practicable to accomplish the purposes of this act.

The port authority is hereby authorized and empowered to establish, levy and collect such rentals, tolls, fares, fees and other charges as it may deem necessary, proper or desirable in connection with any facility or part of any facility constituting a portion of the port development project and to issue bonds for any of the purposes of this

act and to provide for payment thereof, with interest upon and the amortization and retirement of such bonds, and to secure all or any portion of such bonds by a pledge of such rentals, tolls, fares, fees, charges and other revenues or any part thereof (including but not limited to the revenues of any subsidiary corporation incorporated for any of the purposes of this act), and to secure all or any portion of such bonds by mortgages upon any property held or to be held by the port authority, or by any such subsidiary corporation) for any of the purposes of this act, and for any of the purposes of this act to exercise all appropriate powers heretofore or hereafter delegated to it by the states of New York and New Jersey, including, but not limited to, those expressly set forth in this act. The surplus revenues of the port development project may be pledged in whole or in part as hereinafter provided.

Unless and until hereafter expressly authorized by the two states the port authority shall not: (a) operate or permit operation by others of its Hudson tubes railroad cars or other rolling stock or equipment or Hudson tubes extensions railroad cars or other rolling stock or equipment except upon the rail transit lines of the Hudson tubes or of the Hudson tubes extensions and also between the Market street station and the South street station of the Pennsylvania railroad company in the city of Newark, state of New Jersey; or (b) except by way of Hudson tubes extensions as herein defined, make additions, betterments or other improvements to or of said Hudson tubes or Hudson tubes extensions by way of extensions of their rail transit lines. Nothing herein contained shall be deemed to prevent the making by the port authority of such joint service or other agreements with railroads as it shall deem necessary, convenient or desirable for the use of the Hudson tubes and Hudson tubes extensions by the railroad cars or other rolling stock or equipment of such railroads and the

acquisition of the rights of any or all parties in any joint service or other agreements the Hudson & Manhattan railroad company or its successors shall have made with other railroads for such use of the Hudson tubes. The port authority shall not proceed with the effectuation of any railroad or railroad facility in addition to the Hudson tubes and the Hudson tubes extensions until hereafter expressly authorized by the two states. Nothing contained in this act shall authorize or empower the port authority to establish, construct or otherwise effectuate an air terminal.

§ 4. The moneys in the general reserve fund may be pledged in whole or in part by the port authority as security for or applied by it to the repayment with interest of any moneys which it may raise upon bonds issued or incurred by it from time to time for any of the purposes of this act or upon bonds secured in whole or in part by the pledge of the revenues from the port development project or any portion thereof or upon bonds both so issued or incurred and so secured; and the moneys in said general reserve fund may be applied by the port authority to the fulfillment of any other undertakings which it may assume to or for the benefit of the holders of any such bonds.

Subject to prior liens and pledges (and to the obligation of the port authority to apply revenues to the maintenance of its general reserve fund in the amount prescribed by the general reserve fund statutes), the revenues from facilities established, constructed, acquired or otherwise effectuated through the issuance or sale of bonds of the port authority secured in whole or in part by a pledge of its general reserve fund or any portion thereof may be pledged in whole or in part as security for or applied by it to any of the purposes of this act, including the repayment with interest of any moneys which it may raise upon bonds issued or incurred from time to time for any of the purposes of this act or upon bonds secured in whole or in part by

the pledge of the revenues of the port authority from the port development project or any portion thereof or upon bonds both so issued or incurred and so secured; and said revenues may be applied by the port authority to the fulfillment of any other undertakings which it may assume to or for the benefit of the holders of such bonds.

§ 5. In all cases where the port authority has raised or shall hereafter raise moneys for any of the purposes of this act by the issue and sale of bonds which are secured in whole or in part by a pledge of the general reserve fund or any portion thereof, the surplus revenues from any facility constituting a portion of the port development project and financed in whole or in part out of the proceeds of such bonds and the surplus revenue from any other port authority facility the surplus revenues of which at such time may be payable into the general reserve fund shall be pooled and applied by the port authority to the establishment and maintenance of the general reserve fund in an amount equal to one-tenth of the par value of all bonds legal for investment, as defined in the general reserve fund statutes, issued by the port authority and currently outstanding, including such bonds issued for any of the purposes of this act; and all such moneys in said general reserve fund may be pledged and applied in the manner provided in the general reserve fund statutes.

In the event that any time the balance of moneys theretofore paid into the general reserve fund not applied therefrom shall exceed an amount equal to one-tenth of the par value of all bonds upon the principal amount of which the amount of the general reserve fund is calculated, by reason of the retirement of bonds issued or incurred from time to time for any of the purposes of this act the par value of which had theretofore been included in the computation of said amount of the general reserve fund, then the port authority may pledge or apply such excess for and only for

the purposes for which it is authorized by the general reserve fund statutes to pledge the moneys in the general reserve fund and such pledge may be made in advance of the time when such excess may occur.

§ 6. The two states covenant and agree with each other and with the holders of any affected bonds, as hereinafter defined, that so long as any of such bonds remain outstanding and unpaid and the holders thereof shall not have given their consent as provided in their contract with the port authority, (a) the two states will not diminish or impair the power of the port authority (or any subsidiary corporation incorporated for any of the purposes of this act) to establish, levy and collect rentals, tolls, fares, fees or other charges in connection with any facility constituting a portion of the port development project or any other facility owned or operated by the port authority of which the revenues have been or shall be pledged in whole or in part as security for such bonds (directly or indirectly, or through the medium of the general reserve fund or otherwise), or to determine the quantity, quality, frequency or nature of the service provided in connection with each such facility; and (b) neither the states nor the port authority nor any subsidiary corporation incorporated for any of the purposes of this act will apply any of the rentals, tolls, fares, fees, charges, revenues or reserves, which have been or shall be pledged in whole or in part as security for such bonds, for any railroad purposes whatsoever other than permitted purposes hereinafter set forth.

"Affected bonds" as used in this section shall mean bonds of the port authority issued or incurred by it from time to time for any of the purposes of this act or bonds as security for which there may or shall be pledged, in whole or in part, the general reserve fund or any reserve fund established by or pursuant to contract between the port authority and the holders of such bonds, or the rev-

enues of the world trade center, Hudson tubes, Hudson tubes extensions or any other facility owned or operated by the port authority any surplus revenues of which would be payable into the general reserve fund, or bonds both so issued or incurred and so secured.

"Permitted purposes" as used in this section shall mean purposes in connection with (i) the Hudson tubes as authorized and limited on the effective date of this covenant and agreement, (ii) railroad freight transportation facilities or railroad freight terminal facilities, (iii) the construction, installation and maintenance of railroad tracks and related facilities on vehicular bridges owned by the port authority and (iv) any other railroad facility established, acquired, constructed or otherwise effectuated by the port authority (including but not limited to Hudson tubes extensions) as to which the port authority shall have first certified either that said other railroad facility is self-supporting as hereinafter defined or, if not, that at the end of the preceding calendar year the general reserve fund contained an amount equal to one-tenth of the par value of bonds of the port authority which were outstanding at said year end and which were legal for investment as defined in the general reserve fund statutes and that the group of facilities consisting of such other railroad facility and of all prior other railroad facilities will not produce deficits in excess of permitted deficits as hereinafter defined. "Prior other railroad facilities" at the time of any certification by the port authority hereunder shall mean all the railroad facilities described in subdivisions (i) and (iv) of this paragraph which were theretofore established, acquired, constructed or otherwise effectuated by the port authority any surplus revenues of which at such time would be payable into the general reserve fund.

Any other railroad facility shall be deemed to be "self-supporting" as of the time of any certification hereunder if

the amount estimated by the port authority for the ensuing ten years to be the average annual net income (computed without deduction for debt service) derived from or incidental to such facility equals or exceeds the amount estimated by the port authority for such ten years to be the average annual debt service upon bonds for purposes in connection with such proposed facility.

"Deficits" of a group of railroad facilities, as used in this section, shall mean the amount estimated by the port authority for the ensuing ten years to be the average annual combined debt service upon bonds for purposes in connection with the railroad facilites of such group less the amount estimated by the port authority for such ten years to be the average annual combined net income (computed without deduction for debt service) derived from or incidental to such railroad facilities or plus the amount estimated by the port authority for such ten years to be the average annual combined net losses (computed without deduction for debt service) sustained from or incidental to such railroad facilities; the estimate of deficits thus arrived at shall not be effective unless and until concurred in, in writing, by the governors of the said two states.

"Permitted deficits" of a group of railroad facilities, as used in this section, shall mean deficits as of the time of any certification hereunder which do not exceed (A) such amount or amounts of deficits as of the time of any certification hereunder for the payment of which one or both of the two states, in connection with the proposed other railroad facility as to which the certification is made and in connection with prior other railroad facilities, has made adequate, secure and effective provision for the duration of the period for which the port authority is liable for such deficits, plus (B) the greater of the following two amounts: (1) an amount equal to one-tenth of the amount in the general reserve fund at the end of the preceding calendar year,

diminished by an amount equal to one per cent of the principal amount of all bonds of the port authority outstanding at the end of said preceding calendar year the proceeds of which shall have been applied for purposes in connection with the facilities of such group or (2) an amount equal to the sum of one-tenth of the diminished one-tenth amount calculated under clause (1) of this sentence, plus one per cent of the equity, at the end of the said preceding calendar year, of the port authority in its vehicular bridges and tunnels and in all other facilities owned and operated by it (not including railroad cars financed by state-guaranteed bonds) except those of the aforesaid group of railroad facilities. Equity of the port authority in facilities as to which any calculation of equity shall be made shall mean the principal amount of bonds of the port authority retired from port authority revenues or reserves or both which have been derived from the operation of its facilities and the investment of its funds and not from governmental or other subsidy payments, the proceeds of which retired bonds shall have been applied for purposes in connection with such facilities.

Each certification by the port authority hereunder shall be made at the time of the issuance of its first bonds for permitted purposes in connection with a proposed other railroad facility which bonds would be secured in whole or in part by the aforesaid pledged rentals, tolls, fares, fees, charges, revenues or reserves, or at such time, prior to such issuance, as any application of such pledged rentals, tolls, fares, fees, charges, revenues or reserves for purposes in connection with such proposed other railroad facility would otherwise be permitted or required. Anything herein to the contrary notwithstanding, any such certification by the port authority hereunder shall not be effective unless and until affirmatively concurred in, in writing, by the governors of the said two states.

§ 7. The port authority is authorized and empowered to co-operate with the states of New York and New Jersey, with any municipality, with the federal government and with any agency or commission of any one or more of the foregoing, or with any one or more of them, for and in connection with the acquisition, clearance, replanning, rehabilitation, reconstruction or redevelopment of the Hudson tubes-world trade center area or of any other area forming part of the port development project for the purpose of renewal and improvement of said area and for any of the purposes of this act, and to enter into an agreement or agreements (and from time to time to enter into agreements amending or supplementing the same) with any such municipality, commission or agency and with the states of New York and New Jersey and with the federal government, or with any one or more of them, for or relating to such purposes, including but not limited to agreements with respect to financial assistance, loans and grants as provided in title one of the housing act of nineteen hundred forty-nine and all federal laws amendatory and supplemental thereto and with respect to occupancy of space in the port development project. The port authority is hereby authorized and empowered to apply for and accept financial assistance, loans and grants for such purposes under federal, state or local laws, and to make application directly to the proper officials or agencies for and receive federal, state or local loans or grants in aid of any of the purposes of this act.

§ 8. Notwithstanding any contrary provision of law, general special or local either state and any municipality and any commission or agency of either or both of said two states is authorized and empowered to co-operate with the port authority and to enter into an agreement or agreements (and from time to time to enter into agreements amending or supplementing the same) with the port authority for and in connection with or relating to the acquisition,

clearance, replanning, rehabilitation, reconstruction, or redevelopment of the Hudson tubes-world trade ecnter area or of any other area forming part of the port development project for the purpose of renewal and improvement of said area as aforesaid and for any of the purposes of this act, upon such reasonable terms and conditions as may be determined by such state, municipality, agency or commission and the port authority. Such agreement may, without limiting the generality of the foregoing, include consent to the use by the port authority of any real property owned or to be acquired by said state, municipality, agency or commission and consent to the use by such state, municipality, agency or commission of any real property owned or to be acquired by the port authority which in either case is necessary, convenient or desirable in the opinion of the port authority for any of the purposes of this act, including such real property, improved or unimproved, as has already been devoted to or has been or is to be acquired for urban renewal or other public use, and as an incident to such consents such state, municipality, agency or commission may grant, convey, lease or otherwise transfer any such real property to the port authority and the port authority may grant, convey, lease or otherwise transfer any such real property to such state, municipality, agency or commission for such term and upon such conditions as may be agreed upon. If real property of such state, municipality, agency or commission be leased to the port authority for any of the purposes of this act, such state, municipality, agency or commission may consent to the port authority having the right to mortgage the fee of such property and thus enable the port authority to give as security for its bond or bonds a lien upon the land and improvements, but such state, municipality, agency or commission by consenting to the execution by the port authority of a mortgage upon the leased property shall not thereby assume and such consent shall not be construed as

imposing upon such state, municipality, agency or commission any liability upon the bond or bonds secured by the mortgage.

Nothing contained in this section shall impair or diminish the powers vested in either state or in any municipality, agency or commission to acquire, clear, replan, reconstruct, rehabilitate or redevelop substandard or insanitary or deteriorating areas and the powers herein granted to the state, municipality, agency or commission shall be construed to be in aid of and not in limitation or in derogation of any such powers heretofore or hereafter conferred upon or granted to the state, municipality, agency or commission.

Nothing contained in this act shall be construed to authorize the port authority to acquire property now or hereafter vested in or held by any municipality without the authority or consent of such municipality, provided that the state in which said municipality is located may by statute enact that such property may be taken by the port authority by condemnation or the exercise of the right of eminent domain without such authority or consent; nor shall anything herein impair or invalidate in any way any bonded indebtedness of the state or such municipality, nor impair the provisions of law regulating the payment into sinking funds of revenues derived from municipal property, or dedicating the revenues derived from municipal property to a specific purpose.

The port authority is hereby authorized and empowered to acquire from any such municipality, or from any other agency or commission having jurisdiction in the premises, by agreement therewith, and such municipality, agency or commission, notwithstanding any contrary provision of law, is hereby authorized and empowered to grant and convey, upon reasonable terms and conditions, any real property which may be necessary, convenient or desirable for any of

the purposes of this act, including such real property as has already been devoted to a public use.

Any consent by a municipality shall be given and the terms, conditions and execution by a municipality of any agreement, deed, lease, conveyance or other instrument pursuant to this section or any other section of this act shall be authorized in the manner provided in article twenty-two of the compact of April thirty, nineteen hundred twenty-one between the two states creating the port authority. Any consent by either state shall be effective if given, and the terms and conditions and execution of any agreement, deed, lease, conveyance or other instrument pursuant to this section or any other section of this act shall be effective, if authorized, by the governor of such state.

§ 9. The states of New York and New Jersey hereby consent to suits, actions or proceedings by any municipality against the port authority upon, in connection with or arising out of any agreement, or any amendment thereof, entered into for any of the purposes of this act, as follows:

(1) for judgments, orders or decrees restraining or enjoining the port authority from transferring title to real property to other persons in cases where it has agreed with said municipality for transfer of such title to the municipality; and

(2) for judgments, orders or decrees restraining or enjoining the port authority from commiting or continuing to commit other breaches of such agreement or any amendment thereof; provided, that such judgment, order or decree shall not be entered except upon two days' prior written notice to the port authority of the proposed entry thereof; and provided further that upon appeal taken by the port authority from such judgment, order or decree the service of the notice of appeal shall perfect the appeal and stay the execution of such judgment, order or decree appealed from without an undertaking or other security.

Nothing herein contained shall be deemed to revoke, rescind or affect any consent to suits, actions, or proceedings against the port authority heretofore given by the two said states in chapter three hundred one of the laws of New York of nineteen hundred fifty and chapter two hundred four of the laws of New Jersey of nineteen hundred fifty-one.

§ 10. The effectuation of the world trade center, the Hudson tubes and the Hudson tubes extensions, or any of such facilities constituting a portion of the port development project, are and will be in all respects for the benefit of the people of the states of New York and New Jersey, for the increase of their commerce and prosperity and for the improvement of their health and living conditions; and the port authority and any subsidiary corporation incorporated for any of the purposes of this act shall be regarded as performing an essential governmental function in undertaking the effectuation thereof, and in carrying out the provisions of law relating thereto.

§ 11. The port authority shall be required to pay no taxes or assessments upon any of the property acquired or used by it for any of the purposes of this act or upon any deed, mortgage or other instrument affecting such property or upon the recording of any such instrument. However, to the end that no municipality shall suffer undue loss of taxes and assessments by reason of the acquisition and ownership of property by the port authority for any of the purposes of this act, the port authority is hereby authorized and empowered, in its discretion, to enter into a voluntary agreement or agreements with any municipality whereby the port authority will undertake to pay in lieu of taxes a fair and reasonable sum or sums annually in connection with any real property acquired and owned by the port authority for any of the purposes of this act. Such sums in connection with any real property acquired

and owned by the port authority for any of the purposes of this act shall not be more than the sum last paid as taxes upon such real property prior to the time of its acquisition by the port authority; provided, however, that in connection with any portion of the Hudson tubes-world trade center area acquired and owned by the port authority for any of the purposes of this act, after such property is improved pursuant to this act with world trade center buildings, structures or improvements greater in value than the buildings, structures or improvements on such Hudson tubes-world trade center area at the time of its acquisition by the port authority, then, with regard to such greater value, such sum or sums may be increased by such additional sum or sums annually as may be agreed upon between the port authority and the city of New York which will not include any consideration of the exhibit areas of the world trade center or of any areas which would be tax exempt in their own right if title were in the governmental occupants or of other areas accommodating services for the public or devoted to general public use. Each such municipality is hereby authorized and empowered to enter into such agreement or agreements with the port authority and to accept the payment or payments which the port authority is hereby authorized and empowered to make, and the sums so received by such municipality shall be devoted to purposes to which taxes may be applied unless and until otherwise directed by law of the state in which such municipality is located.

§ 12. All details of the effectuation, including but not limited to details of financing, leasing, rentals, tolls, fares, fees and other charges, rates, contracts and service, of the world trade center, the Hudson tubes and the Hudson tubes extensions by the port authority shall be within its sole discretion and its decision in connection with any and all matters concerning the world trade center, the Hudson

tubes and the Hudson tubes extensions shall be controlling and conclusive. The local laws, resolutions, ordinances, rules and regulations of the city of New York shall apply to such world trade center if so provided in any agreement between the port authority and the city and to the extent provided in any such agreement.

So long as any facility constituting a portion of the port development project shall be owned, controlled or operated by the port authority (either directly or through a subsidiary corporation incorporated for any of the purposes of this act), no agency, commission or municipality of either or both of the two states shall have jurisdiction over such facility nor shall any such agency, commission or municipality have any jurisdiction over the terms or method of effectuation of all or any portion thereof by the port authority (or such subsidiary corporation) including but not limited to the transfer of all or any portion thereof to or by the port authority (or such subsidiary corporation).

Nothing in this act shall be deemed to prevent the port authority from establishing, acquiring, owning, leasing, constructing, effectuating, developing, maintaining, operating, rehabilitating or improving all or any portion of the port development project through wholly owned subsidiary corporations of the port authority or from transferring to or from any such corporations any moneys, real property or other property for any of the purposes of this act. If the port authority shall determine from time to time to form such a subsidiary corporation it shall do so by executing and filing with the secretary of state of New York and the secretary of state of New Jersey a certificate of incorporation, which may be amended from time to time by similar filing, which shall set forth the name of such subsidiary corporation, its duration, the location of its principal office, and the purposes of the incorporation which shall be one or more of the purposes of establishing, acquiring, owning, leasing, constructing, effectuating, developing, maintaining,

operating, rehabilitating or improving all or any portion of the port development project. The directors of such subsidiary corporation shall be the same persons holding the offices of commissioners of the port authority. Such subsidiary corporation shall have all the powers vested in the port authority itself for the purposes of this act except that it shall not have the power to contract indebtedness. Such subsidiary corporation and any of its property, functions and activities shall have all of the privileges, immunities, tax exemptions and other exemptions of the port authority and of the port authority's property, functions and activities. Such subsidiary corporation shall be subject to the restrictions and limitations to which the port authority may be subject, including, but not limited to the requirement that no action taken at any meeting of the board of directors of such subsidiary corporation shall have force or effect until the governors of the two states shall have an opportunity, in the same manner and within the same time as now or hereafter provided by law for approval or veto of actions taken at any meeting of the port authority itself, to approve or veto such action. Such subsidiary corporation shall be subject to suit in accordance with section nine of this act and chapter three hundred one of the laws of New York of ninteen hundred fifty and chapter two hundred four of the laws of New Jersey of nineteen hundred fifty-one as if such subsidiary corporation were the port authority itself. Such subsidiary corporation shall not be a participating employer under the New York retirement and social security law or any similar law of either state and the employees of any such subsidiary corporation, except those who are also employees of the port authority, shall not be deemed employees of the port authority.

Whenever any state, municipality, commission, agency, officer, department, board or division is authorized and empowered for any of the purposes of this act to co-operate

and enter into agreements with the port authority or to grant any consent to the port authority or to grant, convey, lease or otherwise transfer any property to the port authority or to execute any document, such state, municipality, commission, agency, officer, department, board or division shall have the same authorization and power for any of such purposes to co-operate and enter into agreements with such subsidiary corporation and to grant consents to such subsidiary corporation and to grant, convey, lease or otherwise transfer property to such subsidiary corporation and to execute documents for such subsidiary corporation.

§ 13. The bonds issued by the port authority to provide funds for any of the purposes of this act are hereby made securities in which all state and municipal officers and bodies of both states, all trust companies and banks other than savings banks, all building and loan associations, savings and loan associations, investment companies and other persons carrying on a commercial banking business, all insurance companies, insurance associations and other persons carrying on an insurance business, and all administrators, executors, guardians, trustees and other fiduciaries, and all other persons whatsoever (other than savings banks), who are now or may hereafter be authorized by either state to invest in bonds of such state, may properly and legally invest any funds, including capital, belonging to them or within their control, and said bonds are hereby made securities which may properly and legally be deposited with and shall be received by any state or municipal officer or agency of either state for any purpose for which the deposit of bonds of such state is now or may hereafter be authorized. The bonds issued by the port authority to provide funds for any of the purposes of this act as security for which the general reserve fund shall have been pledged in whole or in part are hereby made securities in which all savings banks also may properly and legally invest any funds, including capital, belonging to them or within their control.

§ 14. If the port authority shall find it necessary, convenient or desirable to acquire (either directly or through a subsidiary corporation) from time to time any real property or any property other than real property (including but not limited to contract rights and other intangible personal property and railroad cars or other rolling stock, maintenance and repair equipment and parts, fuel and other tagible personal property), for any of the purposes of this act whether for immediate or future use (including temporary construction, rehabilitation or improvement), the port authority, may find and determine that such property, whether a fee simple absolute or a lesser interest, is required for a public use, and upon such determination the said property shall be and shall be deemed to be required for such public use until otherwise determined by the port authority, and such determination shall not be affected by the fact that such property has theretofore been taken for and is then devoted to a public use; but the public use in the hands of or under the control of the port authority shall be deemed superior to the public use in the hands of any other person, association or corporation.

The port authority may acquire and is hereby authorized so to acquire from time to time, for any of the purposes of this act, such property, whether a fee simple absolute or a lesser estate, by condemnation (including the exercise of the right of eminent domain) under and pursuant to the provisions of the condemnation law of the state of New York in the case of property located in or having its situs in such state, and revised statutes of New Jersey, title twenty: one-one et seq., in the case of property located in or having its situs in such state, or, at the option of the port authority, as provided in section fifteen of chapter forty-three of the laws of New Jersey of nineteen hundred forty-seven, as amended, in the case of property located in or having its situs in such state, and as provided in

chapter eight hundred nineteen of the laws of New York of nineteen hundred forty-seven in the case of property located in or having its situs in such state, or pursuant to such other and alternate procedure as may be provided by law of the state in which such property is located or has its situs; and all of said statutes for the condemnation of real property shall, for any of the purposes of this act, be applied also to the condemnation of other property authorized by this section, except that such provisions as pertain to surveys, diagrams, maps, plans or profiles, assessed valuation, lis pendens, service of notice and papers, filing in the office of the clerk in which the real property affected is situated and such other provisions as by their nature cannot be applicable to property other than real property, shall not be applicable to the condemnation of such other property. In the event that any property other than real property is acquired by condemnation under this act then, with respect to such other property, notice of such proceeding and all subsequent notices or court processes shall be served upon the owners of such other property and upon the port authority by personal service or by registered or certified mail, except as may be otherwise directed by the court.

Anything herein to the contrary notwithstanding, any property to be acquired for any of the purposes of this act, which property shall not have been used by its owner or owners or any of his or their predecessors in connection with and shall not have been acquired by its owner or owners or any of his or their predecessors for use in connection with the effectuation by a railroad company or companies of the Hudson tubes or the Hudson tubes extensions prior to port authority acquisition, shall, if such property is personal property, be acquired only by agreement with the owner or owners and shall, if such property is not personal property and is to be acquired by condemnation,

be acquired in an action or proceeding in the state in which such property is located or has its situs. Except as so provided, the port authority is hereby authorized and empowered, in its discretion, from time to time to combine any property which is to be acquired as aforesaid by condemnation for any of the purposes of this act for acquisition in a single action or proceeding notwithstanding that part of the property so to be acquired is located or has its situs in New Jersey and part in New York or is personal property or mixed real and personal property or may be owned by more than one owner; and, except as hereinafter provided, each such single action or proceeding to acquire property located or having its situs part in New Jersey and part in New York shall be pursuant to the laws of whichever of the two said states the port authority shall estimate contains the greater part in value of all the property to be acquired in such action or proceeding (hereinafter sometimes called the forum state) and in the court or courts specified in the laws of the forum state for the condemnation by the port authority of property located or having its situs in the forum state pursuant to this act, in which event, notwithstanding the location or situs of said property, each of said two states hereby confers upon its said court or courts jurisdiction of such action or proceeding and the port authority and any subsidiary corporation so acquiring such property and the owners of such property shall be bound by the judgments, orders or decrees therein. In any such action or proceeding the court or courts of the forum state shall apply the laws of valuation of the other state (hereinafter sometimes called the nonforum state) to the valuation of the property which is located or has its situs in the nonforum state and shall include in the total compensation to be made to any owner of property in both states being acquired in such action or proceeding the increment, if any, in the value of such property in both

states, by reason of its being in a single ownership. If a judgment, order or decree in such an action or proceeding shall vest title in or otherwise award to the condemnor the right to possession of property located or having its situs in the nonforum state, then the court or courts of the nonforum state shall grant full faith and credit to such judgment, order or decree and upon petition by the condemnor to the court or courts of the nonforum state specified in the laws thereof for the condemnation by the port authority of property located or having its situs in the nonforum state pursuant to this act, presenting a true copy of such judgment, order or decree and proof that it is in effect, that any conditions thereof have been met, that at least five days' notice of such petition has been served by registered or certified mail upon all owners of the property affected who appeared in the original action or proceeding in the forum state or who may be owners of record, and without further proof, a judgment, order or decree of such court or courts of the nonforum state shall be entered granting condemnor possession of the property located or having its situs in the nonforum state and confirming any title which shall have vested in the condemnor by the judgment, order or decree of the court or courts of the forum state.

The owner of any property acquired by condemnation or the exercise of the right of eminent domain for any of the purposes of this act shall not be awarded for such property any increment above the just compensation required by the constitutions of the United States and of the state or states in which the property is located or has its situs by reason of any circumstances whatsoever.

Nothing herein contained shall be construed to prevent the port authority from bringing any proceedings to remove a cloud on title or such other proceedings as it may, in its discretion, deem proper and necessary, or from acquiring any such property by negotiation or purchase.

Where a person entitled to an award in the proceedings to condemn any property for any of the purposes of this act remains in possession of such property after the time of the vesting of title in the condemnor, the reasonable value of his use and occupancy of such property subsequent to such time, as fixed by agreement or by the court in such proceedings or by any court of competent jurisdiction, shall be a lien against such award, subject only to liens of record at the time of the vesting of title in the condemnor.

§ 15. The port authority and its duly authorized agents, and all persons acting under its authority and by its direction, may enter in the daytime into and upon any real property for the purpose of making such surveys, diagrams, maps, plans, soundings or borings as the port authority may deem necessary, convenient or desirable for any of the purposes of this act.

§ 16. Any declarations contained herein with respect to the governmental nature and public purpose of the world trade center, Hudson tubes and Hudson tubes extensions and to the exemption of the world trade center, Hudson tubes and Hudson tubes extensions property and instruments relating thereto from taxation and to the discretion of the port authority with respect to said facilities shall not be construed to imply that other port authority facilities, property and operations are not of a governmental nature or do not serve public purposes, or that they are subject to taxation, or that the determinations of the port authority with respect thereto are not conclusive. The powers hereby vested in the port authority and in any subsidiary corporation incorporated for any of the purposes of this act (including but not limited to the power to acquire real property by condemnation) shall be continuing powers and no exercise thereof by the port authority or a subsidiary corporation incorporated for any of the purposes of this act shall be deemed to exhaust them or any of them.

§ 17. This section and the preceding sections hereof constitute an agreement between the states of New York and New Jersey supplementary to the compact between the two states dated April thirty, nineteen hundred twenty-one and amendatory thereof, and shall be liberally construed to effectuate the purposes of said compact and of the comprehensive plan heretofore adopted by the two states, and the powers granted to the port authority shall be construed to be in aid of and not in limitation or in derogation of any other powers heretofore conferred upon or granted to the port authority.

§ 18. If any section, part, phrase, or provision of this act or the application thereof to any person or circumstances be adjudged invalid by any court of competent jurisdiction, so long as the act or remainder of the act shall nonetheless permit the effectuation, as a unified project, of the Hudson tubes, Hudson tubes extensions and the world trade center, such judgment shall be confined in its operation to the section, part, phrase, provisions or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this act or the application thereof to other persons or circumstances and the two states hereby declare that they would have entered into this act or the remainder thereof had the invalidity of such provision or application thereof been apparent.

§ 19. This act shall take effect upon the enactment into law by the state of New Jersey of legislation having an identical effect with this act, but if the state of New Jersey has already enacted such legislation, this act shall take effect immediately.

APPENDIX B

Opinions of Court of Appeals

Per Curiam. A condemnation proceeding brought pursuant to the Port Development Project Law (L. 1962, ch. 209; Laws of N. J., 1962, ch. 8) was approved in this court in the case of *Courtesy Sandwich Shop* v. *Port of N. Y. Auth.* (12 N Y 2d 379 [1963]). The statute under which the Authority brought this proceeding was found to be constitutional because there was no showing at that time that the authority was deviating from the authorized purposes mandated by the statute's terms. The appellants in this condemnation proceeding contend that the steps which the authority has taken to implement the provisions of the statute to bring the trade center into reality deviated from the concept and authorized purposes set out in the statute.

There is no evidence in the record which indicates that the purpose or the provisions under which the Authority was given full discretionary power as to how best carry out the project to its successful fruition are being subverted by the Authority.

The operations and subsequent proposals of the Authority since the decision of the *Courtesy* case (*supra*) are consistent with the primary purposes mandated by the legislation under which it has acted.

In the *Courtesy* case the court had before it a preliminary schedule of space allocations. The schedule indicated that the project was planned so as to satisfy the constitutional interpretation which we assigned to it in accordance with the definition in the statute. That schedule does not differ substantially from the plan before us in this case which sets out the allocation of space in the present planned project.

An analysis of the record points to the single conclusion that the project which is under way under the direction of

the authority is fully authorized by the statute and that the real property being condemned in the present proceedings is being taken for an authorized public purpose. The World Trade tenants will include customs brokers, freight forwarders, carriers, banks, insurers and similar services; customs and other governmental services and offices; World Trade information and promotion services; Commodity Exchange and export-import exhibit and offices. These tenants will occupy a total of 5,910,000 square feet of space. The State of New York and Port Authority offices will take up 2,345,000 square feet of space and the remainder of the space, 1,895,000 square feet, is devoted to the service facilities, such as parking and storage areas, hotels and meeting room facilities, restaurants, newsstands, bank branches and other facilities to either serve the business and commercial needs of the firms that locate in the center themselves, or to serve the needs of the people who will be working for the tenants. The letters of intent of the prospective tenants for space as World Trade Center tenants satisfy the requirements of the statute. The eligibility of the occupancy by the State of New York and the Authority itself is specifically covered by section 2 which makes a distinction between governmental services related to the World Trade functions, activities and services and other governmental services. Furthermore, agreements between the Authority and the States of New York and New Jersey are specifically authorized under the statute. Section 7 gives the Authority power to make such agreements, and under section 8 the corresponding power is given to the States. The tenancy of the State of New York appears to be fully within the contemplation of the Legislatures as an accommodation of other governmental services set out in the statute; and the housing of the Port Authority, a bi-State governmental agency, also qualifies under this category. The Port Authority should also be considered eligible on the ground that the

Port Authority is itself engaged in a World Trade function in that it maintains the Port of New York and has a very substantial role to play in ensuring an improvement in World Trade in the Port of New York which embraces a region in which New Jersey and New York have a major interest. Approximately two thirds of the space within the center is planned for the use of tenants directly involved in World Trade purposes; approximately one sixth is allocated to space devoted to governmental tenants and the remainder, approximately one sixth, to be used for support and service purposes. The service facilities are very much a part of a well-planned World Trade facility which the statute has authorized, and there is no doubt that it is within the Authority's authority in carrying out the directives of the statute that this trade center be established.

Allegations that the plan is doomed to failure were raised in the *Courtesy* case (*supra*) and we there rejected them. They have no greater merit at this time. The Authority has been delegated a task by the Legislatures. Its methods are not reviewable in a court of law as to whether or not they will ultimately succeed. (*City of Mount Vernon v. East Hudson Parkway Auth.*, 45 Misc. 2d 471 [Sup. Ct., Westchester County, 1965], affd. 23 A D 2d 849 [2d Dept., 1965], mot. for lv. to app. den. 16 N Y 2d 483 [1965]; see, also, L. 1962, ch. 209; Laws of N. J., 1962, ch. 8.) The question raised concerning the Authority's ultimate success or failure is mere speculation and is no more than a challenge to the efficacy of the project itself. These, as well as all the other contentions made, do not raise any factual or justiciable issues.

Special Term properly granted summary judgment on the Authority's motion. Here the answers to interrogatories filed in the earlier action have been made a part of the record before the court. The standards of sum-

mary judgment applied to actions should also be applied by the court to proceedings governed by CPLR 409 (subd. [b]). These standards were properly applied by the Judge at Special Term, and, since there are no substantial questions of fact in the case, he correctly granted summary judgment for the Authority on the merits of the legal questions.

The order of the Appellate Division should be affirmed, with costs, and the certified question answered in the affirmative.

Van Voorhis, J. (dissenting). In upholding the constitutionality of chapter 209 of the Laws of 1962, together with concurrent New Jersey legislation (Laws of N. J., 1962, ch. 8), in *Courtesy Sandwich Shop* v. *Port of N. Y. Auth.* (12 N Y 2d 379, 391) this court said: "As to the fears expressed by the respondents that the Port Authority may illegally seize a particular piece of property for an unauthorized nonpublic use, it is sufficient to say that the condemnation procedures prescribed by statute fully protect the respondents and others in like position against any taking for nonpublic purposes in violation of the Port Development Project Law."

Appellants are now here to put that statement to the test. Unless the powers of the Port of New York Authority regarding this project are virtually absolute, so that whatever is done is beyond court review, appellants are, in my opinion, entitled to a trial of the issues concerning whether what the Port Authority is doing in implementation of the World Trade Center does actually relate to the centralization of world trade in this area in New York City. Only if the project is being developed to that end is it constitutional as serving a public purpose under the holding in the *Courtesy Sandwich Shop* case. The Authority recognizes that 1,900,000 square feet of the 10,150,000 projected square feet of rentable area is

to be rented to the State of New York, and the attorney for the Authority conceded on the argument that "The majority, the preponderance of the State of New York's functions are not related to world trade." Neither, it would seem, are the activities of the savings bank or schools proposed to be located in the area as tenants. The standards of eligibility of the Authority are so vague and indefinite that there is hardly a single business in the City of New York which is not eligible for tenancy. It is confidently asserted by appellants that upon a trial they can establish that of the approximately 372 proposed tenants not over 103 have real relation to the World Trade functions.

Deposition discovery proceedings were commenced in the declaratory judgment suit *25 Broad St. Realty Assoc.* v. *Port of N. Y. Auth.*, brought in 1964, but these proceedings were pending and incompleted at the time when the condemnation suit was commenced by the Authority which is now before us. Material areas of information were blocked by objections during the depositions of the authority's witness, and the Authority contended that declarations on the pertinent issues were privileged and refused disclosure of documents and barred oral testimony by informed Authority personnel bearing upon the issues which appellants seek to try but are precluded from trying by the summary judgment now under review. These circumstances alone demonstrate that appellants are entitled to a trial in order to elicit fully the material facts bearing upon whether these property owners in the project area are being ejected, in violation of the *Courtesy Sandwich Shop* decision, from nonslum locations which they have occupied for years, without recompense for loss of good will and with the prospect that at least one out of four will be forced permanently out of business (see Martin Anderson, The Federal Bulldozer, p. 69; Kinnard and Malinowski, The Impact of Dislocation from Urban

Renewal Areas on Small Business, prepared by the University of Connecticut under a grant from the Small Business Administration, July, 1960, pp. 2, 3; Study of Compensation and Assistance for Persons Affected by Real Property Acquisition in Federal and Federally Assisted Programs, printed for use of the House Committee on Public Works, 1965, Committee Print No. 31, p. 29, which says 35.3%).

Not only are the property owners affected in the project area, but the affirmative defenses allege, supported by affidavits adequate to warrant denial of summary judgment, that the Authority's contemplated project is a huge real estate development, primarily devoted to the production of revenue which only incidentally will house World Trade functions and that the Authority is unlawfully competing with private enterprise through the utilization of its claimed tax immunities for tenants not engaged in World Trade functions.

The order appealed from should be reversed and petitioner's motion for summary judgment should be denied.

Chief Judge DESMOND and Judges FULD, BURKE, SCILEPPI, BERGAN and KEATING concur in *Per Curiam* opinion; Judge VAN VOORHIS dissents and votes to reverse in a separate opinion.

Order affirmed, etc.

Opinion of Special Term, New York County

The Port of New York Authority petitions for an order to condemn certain real property for public use for World Trade Center purposes. It does so as the agent of the States of New York and New Jersey to effectuate a port development project mandated by legislation (Laws of N.Y., 1962, ch. 209, McK. Unconsol. Laws, § 6601 et seq.; Laws of N.J., 1962, ch. 8, N.J.S.A. 32:1-35.50). The project involves the operation of the Hudson Tubes and a World Trade Center as a unified project.

In 1963 the Court of Appeals held that the concept of the World Trade Center represents a public purpose and that the benefit from this facility "is not too remote or speculative as to render the means chosen to achieve it patently unreasonable" (Courtesy Sandwich Shop, Inc., et al. v. Port of New York Authority, 12 N.Y.2d 379, 388, 240 N.Y.S.2d 1, 5, 190 N.E.2d 402, 405, app. dsmd. 375 U.S. 78, 84 S.Ct. 194, 11 L.Ed.2d 141, reh. den. 375 U.S. 960, 84 S.Ct. 440, 11 L.Ed.2d 318); and that the statute is valid and constitutional (id. p. 388, 240 N.Y.S.2d p. 4, 190 N.E.2d p. 404). The Court also held that under the statute, the Port Authority is obliged to create the World Trade Center, has no discretion to abandon it and is directed to proceed rapidly to accomplish it (id. p. 393, 240 N.Y.S.2d p. 9, 190 N.E.2d p. 407).

At the time of the Courtesy decision, the Port Authority had only taken the Hudson Tubes and had not yet submitted a final plan for the World Trade Center although the Court of Appeals had before it some evidence of the type of Center contemplated by the Port Authority.

The World Trade Center is defined by Section 2 of the enabling legislation as:

> "that portion of the port development project constituting a facility of commerce consisting of one or more buildings, structures, improvements and areas

necessary, convenient or desirable in the opinion of the port authority for the centralized accommodation of functions, activities and services for or incidental to the transportation of persons, the exchange, buying, selling and transportation of commodities and other property in world trade and commerce, the promotion and protection of such trade and commerce, governmental services related to the foregoing and other governmental services * * *" (emphasis added).

Section 12 provides:

"All details of the effectuation, including but not limited to details of financing, leasing, rentals, tolls, fares, fees and other charges, rates, contracts and service, of the world trade center * * * by the port authority ***shall be within its sole discretion and its decision in connection with any and all matters concerning the world trade center * * * shall be controlling and conclusive***" (emphasis added).

In the Courtesy case the property owners expressed fears that the Port Authority may illegally seize property for unauthorized public use. The court held at page 391, 240 N.Y.S.2d at page 7, 190 N.E.2d at page 406:

"* * * [T]he condemnation procedures prescribed by statute fully protect the respondents and others in like position against any taking for non-public purposes in violation of the Port Development Project Law."

Thus, the only issue left open by the Court of Appeals for further judicial determination is whether the actual plan of the Port Authority for the carrying out of the

mandate of the statute provides for nonpublic purposes and therefore violates the terms and conditions of chapter 209.

Subsequent to the decision of the Courtesy case the Port Authority announced a plan for the construction of World Trade Center twin towers. In September, 1964 certain property owners on behalf of themselves and of all other taxpayers and owners of office buildings similarly situated in the Borough of Manhattan, sued for a declaratory judgment adjudging, among other things, that the proposed development is not authorized by chapter 209 of the Laws of 1962 and is beyond the power of the Port Authority to construct. The Port Authority filed an answer to this complaint denying its material allegations. (These pleadings are now before this court; in this proceeding serving different functions, the complaint is treated as an answer to the petition and the answer as a reply thereto.)

Thereafter, the plaintiffs in that action obtained written answers of the Port Authority to written interrogatories submitted by them, and on September 23 and October 7, 1965 also orally examined before trial Richard C. Sullivan, an employee of the Port Authority and Director of the World Trade Center. The subject matter contained in these pretrial discovery procedures show, in substance, the Port Authority's determinations of project's location, size, allocation of space and categories of tenants.

The petition for condemnation now before this court alleges that on September 9, 1965 the Port Authority, by resolution duly adopted on said date, has found and determined that "it is necessary for public use for World Trade Center purposes to acquire title in fee simple absolute" of the property described in the petition and further, authorized the institution of a condemnation proceeding to acquire title to the property pursuant to the procedure set forth in chapter 819 of the Laws of New York 1947.

The parties plaintiff in the declaratory judgment action and one other property owner have filed answers to the petition alleging denials and purported defenses. On October 25, 1965 in open court, the parties agreed that all the proceedings theretofore had in the action for declaratory judgment would "be available in this proceeding as if they were had in this action." As a consequence, in the instant proceeding three answers are interposed: an answer by 25 Broad Street Realty Associates et al. pleading substantially the same allegations as their complaint in the collateral action; another—the complaint of Sarah and David McInnes et al., intervenors in the collateral action—which is deemed an answer here; and the third, a separate answer by National Radio Dealers Supply Co., Inc. In substance these answers deny that the Port Authority has the right to elect to acquire the property described. The other allegations, except insofar as they contest a taking for a public use, raise no justiciable issues in this proceeding and the court now so holds. (These other allegations allege in substance that the Port Authority will use its tax exempt status in competition with private realty interests; that the Port Authority has entered into negotiations with foreign States without the consent of the Congress of the United States; that the Port Authority has agreed with the City of New York to receive favored tax treatment at a considerable loss of tax revenue to the City; and that the planning and construction of the buildings are in excess of the reasonable purpose and scope of the legislative enactment and constitute mere speculation with public funds.)

The Port Authority now moves for summary judgment upon said pleadings and depositions. It contends that neither the answers nor other papers filed by respondents raise any issue of fact that requires a trial. The issues, if any, claims the Port Authority, fall into two classes: those legal issues which must be dismissed as a matter of law under the Courtesy case and issues disposed of by

proof in the Port Authority's answers to interrogatories and oral examinations before trial in the action for declaratory judgment.

The condemnees argue, on the other hand, that the papers raise issues that cannot be resolved except on a plenary trial. Furthermore, they claim the Courtesy case, supra, is "utterly inapplicable". They contend that the Courtesy case merely held that on the face of the statute there was a public purpose manifested.

In sum, they allege the area to be taken will actually be used for purposes other than for centralization of world trade facilities and that the public benefit resulting therefrom will be subordinated and incidental to the primary object of the production of revenue. The measure of available proof, however, to meet their burden of proof, they allege, "is not now before this court" and is a question to be decided on a trial.

In the opinion of the court, the present plan submitted by the Port Authority contemplates a taking for a public purpose and is not in violation of the statute authorizing the World Trade Center. The respondents have urged numerous arguments against the project and have expressed dire predictions and speculations as to the future of it; but none of this, nor any other matter in their papers, raises any triable issue of fact. The fact that there are changes between the plan that was before the Court of Appeals in the Courtesy case and the plan now before this court does not convert the present plan into a taking for nonpublic purposes. The differences between the two plans are not relatively substantial and are of no legal significance. The primary public purpose still remains and the plan conforms with the statute. Any provision for revenue production still remains incidental to the primary purpose.

The law is clear "that the question of necessity or expediency of a taking in eminent domain lies within the

discretion of the Legislature and is not a proper subject of judicial review" (City of Mount Vernon, New York v. East Hudson Parkway Auth., 45 Misc.2d 471, 478, 257 N.Y.S.2d 51, 58, affd. 23 A.D.2d 849, 259 N.Y.S.2d 167, mot. for lv. to app. den. 16 N.Y.2d 483, 261 N.Y.S.2d 1027, 209 N.E.2d 563), and it is also clear that in this case the Port Authority is acting as the Legislature's agent in determining the precise details of any plan to effectuate the intent of the Legislature.

In Matter of City of New York (Ely Avenue), 217 N.Y. 45, at page 57, 111 N.E. 266, at page 270 [1916], Hogan, J., writing for the Court of Appeals, stated: "It is the established law by numerous decisions of this court that, in the exercise of the power of eminent domain, the opinion of the Legislature or the tribunal upon which is conferred power to determine the questions of necessity or expediency in the acquirement of private property for public use is political, not judicial, in its nature." And, at page 59, 111 N.E. at page 271: "This court * * * will not impute to the Legislature or the discretionary action of municipal bodies clothed with legislative powers other than public motives for their acts; that the presumption that legislative action has been devised and adopted on adequate information and under the influence of correct motives will be applied to the discretionary action of municipal bodies and will preclude all collateral attack (McCabe v. City of New York, 213 N.Y. 468, 107 N.E. 1049), and this rule has long been established by decisions of this court." (See also Matter of Public Service Commission, etc., 217 N.Y. 61, 111 N.E. 658).

In the light of the foregoing, the court is of the opinion that the papers before it fail to make any showing of triable issues of fact sufficient to warrant a plenary trial. Accordingly, the application for summary judgment and the application to condemn are granted.

Judgment of Court of Appeals

COURT OF APPEALS

STATE OF NEW YORK, ss.:

PLEAS in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 7th day of July in the year of our Lord one thousand nine hundred and sixty-six, before the Judges of said Court.

WITNESS,

The HON. CHARLES S. DESMOND,
Chief Judge, *Presiding.*

RAYMOND J. CANNON, *Clerk.*

Remittitur July 7, 1966

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1. No. 148 66

In the Matter of

the Application of the PORT OF NEW YORK AUTHORITY, to acquire title to certain real property &c., for WORLD TRADE CENTER purposes.

THE PORT OF NEW YORK AUTHORITY,
Respondent,

62 CORTLANDT STREET REALTY CO., INC., & ORS., &C.,
Appellants.

BE IT REMEMBERED, That on the 25th day of March in the year of our Lord one thousand nine hundred and sixty-six, 62 Courtlandt Street Realty Co., Inc., & ors., &c., the appellants in this cause, came here unto the Court of Appeals, by Milton Pollack, & ors., their attorneys, and filed in the said Court a return thereto from the order

of the Appellate Division of the Supreme Court in and for the First Judicial Department. And The Port of New York Authority, the respondent in said cause, afterwards appeared in said Court of Appeals by Sidney Goldstein, its attorney.

Which said return thereto, filed as aforesaid, are hereunto annexed.

WHEREUPON, The said Court of Appeals having heard this cause argued by Mr. Milton Pollack, of counsel for the appellants 62 Courtlandt Street Realty Co., Inc., & ors., and by Mr. Stanley Geller, of counsel for the appellants McInness, & ors., and by Mr. Daniel B. Goldberg, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court herein be and the same hereby is affirmed, with costs. Question certified answered in the affirmative.

And it was also further ordered, that the record aforesaid, and the proceedings in this Court, be remitted to the Appellate Division of the Supreme Court, First Judicial Department, there to be proceeded upon according to law.

THEREFORE, it is considered that the said order be affirmed, with costs. Question certified answered in the affirmative, as aforesaid.

And hereupon, as well the return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Appellate Division of the Supreme Court, First Judicial Department, before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Appellate Division, before the Justices thereof, &c.

RAYMOND J. CANNON,
Clerk of the Court of Appeals
of the State of New York.

Judgment of Court of Appeals

COURT OF APPEALS, CLERK'S OFFICE,
Albany, July 7, 1966.

I HEREBY CERTIFY, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

[SEAL]

RAYMOND J. CANNON,
Clerk.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 749

SARAH McINNES, *et al.*,

Petitioners,

against

THE PORT OF NEW YORK AUTHORITY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI

BRIEF FOR RESPONDENT IN OPPOSITION

SIDNEY GOLDSTEIN,
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Question Presented

Is a substantial question raised under the due process clause of the Fourteenth Amendment by the condemnation of petitioners' property (a) for uses concededly public within the meaning of said clause (b) pursuant to legislation which is concededly constitutional—merely because petitioners claim that the state court misconstrued the legislation by holding that it authorized the functional plan of the project for which the condemnation was brought?

Argument

This is the second time these merchants have asked this Court to review a decision of the New York Court

of Appeals concerning the World Trade Center in New York City. The first time was in 1963 in litigation challenging the constitutionality of the World Trade Center legislation (Ch. 209, Laws of N. Y. 1962); *Courtesy Sandwich Shop, Inc.* v. *Port of New York Authority,* 12 N. Y. 2d 379, app. dism. 375 U. S. 78, reh. den. 375 U. S. 960. There, it was held that the statute was constitutional because it authorized condemnation only for valid public uses. This Court dismissed petitioners' appeal for want of a substantial federal question.*

Since then, the Port Authority has moved forward to discharge its statutory duty to effectuate the World Trade Center. On July 12, 1965, the Senate Public Works Committee gave the approval required under the Federal Buildings Act of 1959 to the recommendation by the General Services Administration that the United States Custom Service, customs clearance and appraisal activities in New York City be consolidated in the World Trade Center. 111 Cong. Rec. 16123-4 (July 14, 1965). On September 9, 1965, the House Committee on Public Works recorded its approval. 111 Cong. Rec. 23371 (Sept. 17, 1965).

On September 30, 1965, the Port Authority instituted this condemnation proceeding in the New York State Supreme Court, New York County. Petitioners contended in the New York courts that the floor space which the Port Authority proposed to allocate for New York State and Port Authority offices within the Center was legislatively unauthorized.** Each of the three New York courts has, in turn, overruled this objection. The Court of Appeals held:

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* Present petitioners include one of the appellants in the prior case. The same association of merchants sought both reviews.

** The overwhelming majority of property owners on the World Trade Center site have not objected to the condemnation and seek only a prompt determination of the just compensation due them.

> "The eligibility of the occupancy by the State of New York and the Authority itself is specifically covered by section 2 [of the legislation] which makes a distinction between governmental services related to the World Trade functions, activities and services and other governmental services. * * * The tenancy of the State of New York appears to be fully within the contemplation of the Legislatures as an accommodation of other governmental services set out in the statute; and the housing of the Port Authority, a bi-State governmental agency, also qualifies under this category. The Port Authority should also be considered eligible on the ground that the Port Authority is itself engaged in a World Trade function * * *. Approximately two thirds of the space within the center is planned for the use of tenants directly involved in World Trade purposes; approximately one sixth is allocated to space devoted to governmental tenants and the remainder, approximately one sixth, to be used for support and service purposes." 18 N. Y. 2d 250, 254.

While petitioners vaguely suggest that the facts might be reviewed by this Court (Pet. 18), they do not take issue with the factual accuracy of the Court of Appeals' description of the plan. Their quarrel is with the Court of Appeals' holding that this plan is authorized by the legislation and they deem this question of statutory interpretation somehow is a due process question.

Petitioners concede that the statute under which the proceeding was brought is constitutional under *Courtesy* (Pet. 6, 8). They concede that the statute authorizes not only centralization of world trade functions but, under a binding interpretation, accommodation of State and Port Authority governmental office space as well (Pet. 17-18). They concede that all these functions—which are the only ones to be accommodated—represent public uses for which condemnation is permitted under the due process clause (Pet. 13). Nevertheless, they claim that the plan, as a totality of its concededly authorized parts, is not authorized by the legislation and that a due process question arises merely out of

their disagreement with the State courts' contrary interpretation of the statutory language.*

This Court has for many years now found no substantial Federal question, even in appeals to review the constitutionality of statutes, where the only question involved was the validity of the public use for which condemnation was authorized. *Courtesy Sandwich Shop, Inc.* v. *Port of New York Authority, supra; Cannata* v. *City of New York,* 371 U. S. 4 (1962); *Grisanti* v. *City of Cleveland,* 371 U. S. 68 (1962); *Annbar Associates* v. *West Side Redevelopment Corp.,* —— U. S. —— (35 U. S. L. Week 3112 Oct. 11, 1966) (No. 152). *A fortiori* this petition raises no substantial due process question. The question here is one only of statutory interpretation as to whether or not the specific plans for a specific public structure fall within the contemplation of constitutional legislation under which the proceeding is brought.

No citation is, or can be, offered for petitioners' argument that this question presents an issue of due process. In determining the existence of such an issue, this Court is

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* Petitioners claim that the Port Authority's plans do not follow the statutory scheme because the legislation makes world trade functions "primary" whereas, it is said, the Port Authority has subordinated them to the relocation of State government offices. The answer is in the uncontested fact that the space allocations are two-thirds for world trade occupancies (including the Port Authority) and one-sixth for State governmental offices. If petitioners mean something different by "primary" purpose than this, then we submit that the argument is frivolous:—there is statutory compliance when, as here, the public officers who are under statutory mandate produce objectively what the legislature required and any different subjective evaluation of purpose made by petitioners cannot change these controlling facts. Cf. *Ashwander* v. *Tennessee Valley Authority,* 297 U. S. 288, 324 (1936). As the Court of Appeals held, based on the undisputed specific space allocations in the plan:

> "The operations and subsequent proposals of the Authority since the decision of the *Courtesy* case (*supra*) are consistent with the primary purposes mandated by the legislation under which it has acted." 18 N. Y. 2d 250, 253.

bound by the State courts' construction of the State statute. Thus, as this Court said in *Hebert* v. *Louisiana*, 272 U. S. 312, 316-17 (1926):

> "* * * the accused contend here, as they did in that [the state] court, that the construction [of the state legislation] was wrong and, being wrong, operated as a denial of due process of law in the sense of the 14th Amendment. * * * All that would be open in this court under the due process clause is whether the state had power to impose the penalty fixed by the statutes as thus construed. Rawlins v. George, 201 U. S. 638, 640, * * *. That the state had such power is not questioned, but only that the statutes rightly construed show that the power has been exercised. On this question, as we have said, the decision of the supreme court of the state is controlling."

To the same effect see also *N. A. A. C. P.* v. *Button*, 371 U. S. 415, 432 (1963); *Terminiello* v. *Chicago*, 337 U. S. 1, 4 (1949).

Petitioners concede that they are bound by the State court interpretation that the statute authorizes allocation of space for State government offices (Pet. 17-18). Inconsistently, they still challenge the binding effect of the State court interpretation that the statute authorizes the contemplated functional plan *in toto*, citing *Southern Pacific Co.* v. *Arizona*, 325 U. S. 761 (1945); *Hooven & Allison Co.* v. *Evatt*, 324 U. S. 652 (1945) and *Spano* v. *New York*, 360 U. S. 315 (1959).

These cases involve respectively the right of a state to burden interstate commerce by limiting the number of cars in a railroad train, to tax imports and to extract a confession from a murder suspect. The challenged State action in each was absolutely prohibited by the Federal Constitution and could not be authorized by State legislation no matter how construed.

In contrast, what is specifically complained of here is perfectly valid under the due process clause of the Four-

teenth Amendment—the acquisition of private property to house New York State offices and the offices of one of its governmental agencies.

Respectfully submitted,

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November 23, 1966.